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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
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Agenda item 10

# THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written statement submitted by the Society for Threatened Peoples, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social resolution 1296 (XLIV).

[21 August 1995]

1. One way the Sub-Commission can demonstrate its concern and willingness to prevent another Somalia, Rwanda or Bosnia and Herzegovina, is to beam its searchlight on the system of justice in States Members of the United Nations. It should take urgent steps to urge Governments, particularly African Governments, to respect and restore the fundamental rights of the thousands of their citizens that have been arbitrarily arrested and are languishing in jail. Several respectable NGOs, including Amnesty International and Human Rights Watch, have regularly undertaken painstaking investigations into gross violations of the human rights of detainees, most of whom are tortured, starved and denied medical care. In spite of several appeals to Governments in these reports to check and end these abuses, they persist. A ready example is the situation of the Ogoni people of Nigeria, who, following the deployment of a large Special Military Task Force, have suffered massive and systematic violations of their freedoms. Well over 10,000 Ogonis were arrested, detained, tortured, flogged and ransomed during the period May 1994 and July 1995. Several detention centres were improvised solely to accommodate Ogoni detainees at Kpor, a detention camp in the Gokana area of Ogoniland, at

the headquarters of the 2nd Amphibious Brigade, Bori camp, Port Harcourt, the Special Intelligence and Investigation Bureau (SIIB) and the Nigerian Prison, Port Harcourt. 153 Ogonis are still being held without charges.

2. In Kosovo, the Special Rapporteur of the Commission on Human Rights has reported several cases of police brutality against ethnic Albanians. He also reported the killing of ethnic Albanians resulting from such brutality, arbitrary searches, seizures and arrests, forced evictions, torture and ill-treatment of detainees. There is also evidence of discrimination in the administration of justice, including several trials, which are still going on, of former Albanian policemen.

3. One critical issue that should not be ignored by the Sub-Commission is that of impunity of perpetrators of human rights abuses. In most countries where there have been constant and persistent reports of gross human rights violations, the authorities look the other way as members of the security forces trample on the basic freedoms of their citizens. One can list several Member States where grave reports of police brutality, extrajudicial killings, rape, torture and other inhuman and degrading treatment of citizens are commonplace. Despite this security officials are often not tried or punished for these crimes. This point has been raised by the distinguished expert of the Sub-Commission, Ms. Claire Palley, after a careful study of reports of special rapporteurs of the Commission. In spite of the national and international outcry over the excessive use of lethal force by security operatives, summary executions, indiscriminate arrests, detention, rape and torture perpetrated against the oil-rich Ogoni people of the Rivers State of Nigeria, no security official has been brought to justice or punished for these crimes.

4. Conditions of detention in connection with the conflict in the Chechen Republic also fail to meet humanitarian standards. Released prisoners from Russian detention camps report that they were beaten, gnawed by dogs and kept in overcrowded railway carriages. This month, one prisoner, Khamad Kurbanov, a Chechen government representative was hung by his feet from a helicopter and forced to undergo a mock execution before he was released. During the mock execution he was blindfolded and made to face a wall. The soldiers reportedly then shouted "Bid farewell to life, Dudayev scum" and fired above him and to the sides.

5. Another area of concern is the habit of some States to establish special tribunals by military decrees to try their perceived critics and human rights defenders on trumped-up charges. The special tribunals circumvent the normal civil courts and their verdicts are not subject to judicial appeal. Persons tried under such military legislation are denied their right to a fair trial guaranteed under international instruments to which these States are signatories. In Nigeria, for example, in February 1995, the authorities arraigned Mr. Ken Saro-Wiwa, a famous writer and President of the Movement for the Survival of the Ogoni People (MOSOP), Ledum Mitee, his deputy, and 13 other Ogonis before a special tribunal on charges of incitement to murder. The tribunal, set up by a military decree, has a serving military officer and two judges - appointed by Nigeria's military head of State - as members. The accused face a possible death sentence which is not subject to a judicial appeal.

6. The Society for Threatened Peoples appeals to the Sub-Commission to urge the Nigerian authorities to institute an independent judicial commission of inquiry to investigate cases of excessive use of lethal force by security forces, extrajudicial killings, summary executions, rape, indiscriminate arrests, detention, torture and arson. Any persons accused of such excesses should be tried in appropriate civil courts in compliance with international human rights covenants to which Nigeria is a signatory.

7. The Society for Threatened Peoples should not fail to mention briefly the general tense situation in Nigeria. Six major NGOs working on human rights in Nigeria, including MOSOP, have recently sent an invitation to the High Commissioner for Human Rights to visit Nigeria to meet with government officials and human rights defenders in order to stem the steady drift to chaos. We urge the Sub-Commission to encourage Nigeria to invite the High Commissioner to pay a visit there.

8. The Society for Threatened Peoples also appeals to the Sub-Commission to urge the Government of Bangladesh to reply to allegations of torture transmitted by the Special Rapporteur on the question of torture and to invite the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture to visit the country to carry out the investigations in accordance with their mandates.

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# THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by FIAN International,
a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[22 August 1995]

## Structural adjustment programmes: their relationship to human rights

1. FIAN (Foodfirst Information and Action Network) International is a human rights organization for the right to feed oneself. The prime concern of our organization with structural adjustment is the way in which these policies affect the right to gain and sustain an adequate standard of living, including food, as guaranteed in article 11 of the International Covenant on Economic, Social and Cultural Rights. We are, nevertheless, also concerned with the general human rights effects of the structural adjustment programmes beyond the right to food itself, as reflected in the following remarks.

## National and international State obligations

2. The primary responsibility to respect, protect and fulfil human rights as codified through the two international covenants on human rights, lies with each Government that has ratified one or both of the instruments. This

obligation includes the maximum utilization of available resources to this end. The Committee on Economic, Social and Cultural Rights, in its General Comment 3 on article 2 of the International Covenant on Economic, Social and Cultural Rights, has specified that these "available resources" include bilateral and multilateral financial assistance.

3. In addition to the national obligations referring to persons in its own territory, every State party has a general obligation to respect the national endeavours of other States parties to the Covenants to fulfil their treaty obligations and to assist those Governments in their tasks. This international obligation is clearly stated in article 2.1 of the International Covenant on Economic, Social and Cultural Rights, which provides that appropriate measures towards the full realization of the guaranteed human rights shall be taken "individually and through international assistance and cooperation".

Human rights obligations of specialized agencies

4. Specialized agencies of the United Nations, such as the World Bank and the International Monetary Fund, have a duty to observe the human rights standards as developed by the United Nations, and to assist each Government in satisfying its obligations to respect, protect and fulfil the human rights of the people residing in its State.

5. Although the international financial institutions are not parties to the Covenants, which are open for ratification only by States, these institutions are under the direction of States, a majority of which are parties to the two Covenants, and hence duty-bound by the international obligations mentioned above.

6. The human rights obligations of these institutions can also be attributed to their international legal personality, which grants the institutions certain rights to operate in the international community, but which also implies a duty to act within the realm of international law, an integral part of which is the body of human rights law, most prominently codified in the two Covenants mentioned above.

7. In the past 15 years, structural adjustment programmes (SAPs), in various forms, have gained increased importance in the lending policies of the World Bank and IMF. In order to give practical recognition to the above-mentioned human rights obligations, the following conditions should be safeguarded in the design and implementation of the programmes.

(i) That SAPs do not induce States to violate or breach human rights;

(ii) That SAPs support the States' programmes designed to implement economic rights, wherever they exist;

(iii) That SAPs assist in the implementation of new measures towards the full realization of economic human rights.

SAPs and human rights

8. Under structural adjustment programmes, a large number of States parties to the human rights Covenants receive loans tied to conditions of structural changes in their economies. Our concern is the compatibility of such international agreements with the human rights obligations undertaken by the individual Government under international law, which are superior to contractual obligations between the individual country and international financial institutions.

9. We are also concerned with the question whether the measures promoted by the international financial institutions are compatible with the obligations of these institutions under international human rights law.

10. In the past few years, a large number of non-governmental and governmental organizations, including the World Bank and IMF themselves, have increasingly recognized the impoverishment of certain sectors of the population (along with the environmental degradation) linked to many SAPs, which has been labelled the social (and environmental) cost of adjustment.

11. Cost-benefit analysis, however, is unacceptable as soon as the living standards of vulnerable persons are reduced by SAPs to deprivation levels below the core content of basic human rights. Policies and programmes burdening vulnerable persons and groups to the extent of depriving them of the existential core content of basic human rights, to which they are entitled under international human rights law, constitute violations of human rights.

12. There is no justification for violations of human rights, be they civil, cultural, economic, political, or social. Human rights hold unconditionally and States parties, as well as international institutions cannot be relieved from their human rights obligations at any point in time.

13. Violations of civil and political rights must under no circumstances be seen as the "political cost" of certain governmental programmes. In the very same way, violations of economic, social and cultural rights cannot be justified by any governmental programme.

A human rights convention for specialized agencies

14. Although SAPs have figured prominently in the international debate on how to solve the present crisis in international relations, this is far from the only way in which individual States interact with specialized agencies of the United Nations.

15. Other policies of the financial institutions, and other specialized agencies, prove to have adverse, undesired effects in the domestic setting where they are implemented - some to the extent that human rights protection is in jeopardy.

16. In order to emphasize the link between the activities of the specialized agencies and human rights, FIAN supports the call for the drafting and adoption of an international human rights convention for specialized agencies. The international obligations of these agencies are not too difficult to

establish using current international law and international human rights law. Such a convention, however, is called for to express the agencies' commitment to human rights and provide the much needed clarification on the actual extent and content of these obligations. This would serve as a tool to ensure the accountability of the specialized agencies in terms of human rights, and would introduce a supervision machinery for the efficient respect for these obligations.

Conclusions

17. Current international human rights law provides sufficient protection and obligations to assert that:

(i) SAPs must not induce States to violate or breach human rights;

(ii) SAPs should support the States' programmes designed to implement human rights, wherever they exist;

(iii) SAPs should assist in the implementation of new measures towards the full realization of economic human rights.

18. FIAN is, however, aware of activities that fall outside the realm of SAPs, and will thus support the drafting of a human rights convention for specialized agencies, aimed at specifying the extent to which these agencies are under international obligations to respect, protect and fulfil human rights in their operations; the content of such obligations; and, not least, introducing a supervision machinery for the practical implementation of these obligations and a complaint procedure for individuals and groups.

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